

**Public Law and Legal Education in the Nineteenth Century:
The Founding of Burgess' School of Political Science at Columbia**

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This paper discusses the founding of the School of Political Science at Columbia University by John W. Burgess in 1880. Burgess established the political science school after failing in his attempts to introduce a program of coursework in political science and public law at Columbia's School of Law. He hoped that the new school would supplement the private-law curriculum of the law school, with the particular aim of preparing students for a career in public service. The School of Political Science, however, quickly abandoned that purpose and became a non-professional graduate department in political science. As such, it was a model for similar departments at other universities, and contributed to the development of American political science as a discipline. By removing instruction in public law from the law school, however, Burgess did legal education a disservice. While the courses at the political science school were open to law students, and Burgess and his colleagues continued to teach a handful of elective courses at the law school, the core of the law school curriculum remained devoted to private law. Courses in public law subjects were not required at Columbia Law School until 1935.

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When John W. Burgess established a School of Political Science at Columbia University in 1880, he found himself at the crossroads of four related paths: the development of American undergraduate colleges into research universities; the establishment of political science as a distinct graduate field of study; the popular movement advocating the professionalization of the civil service; and the coming of age of American legal education. The founding of Burgess' new school marked a notable victory for the first of those endeavors: the School of Political Science became Columbia's first non-professional graduate school. It further became a model for departments of political science at other universities, so that political science attained the prestige and resources of a graduate discipline decades before the field's scholarly contributions matched the distinction of its institutional growth. The founding of the School of Political Science, however, represented a setback for the latter two of the above-mentioned fields: training for public service and training in the law. Designed for the professional training of public servants, the new school immediately lost its professional character, and embarked on the training of academics in political science. Most significant, however, was the division of Burgess' public law program from the law school. The founding of the School of Political Science represented an attempt to remove training for public service from the law school. Instead, future public servants chose law schools for their training as often as ever, and the founding of the School of Political Science served to remove training in public law, political science and economics from the future public servants.

Remembered principally for his contribution to political science, Burgess in fact had developed a modern vision of legal education. He not only recognized the significance of the role played by trained lawyers in government and politics, but he also believed that a traditional background in private law was an essential facet of the training of a high-level public servant. The importance of the law school in Burgess' vision is largely ignored by historians of political science. Burgess was concerned with the development of political science as an academic discipline as well as the development of the American university generally, and he embraced the project of the new school. Nonetheless, he never abandoned his commitment to the inclusion of

the law students in the teaching of the political science school. Ultimately, though, the paths of the two schools diverged. A triumph for the university and an important step for academic political science, the School of Political Science also represented a missed opportunity in legal education.

I. The Trustees and the University.

When Burgess founded the School of Political Science in 1880, it was Columbia's powerful Board of Trustees that could claim an unqualified victory. For several decades the development of Columbia from an undergraduate college into a research university had been a principal occupation of the trustees. The School of Political Science, ultimately Columbia's first non-professional graduate school, marked the turning point of this transformation.

A. The School of Law.

Columbia's trustees enjoyed a remarkable degree of autonomy in the management of the college's affairs¹ and were deeply concerned with both the grandest and the most minute affairs of the small college.² By the 1850's, a group of progressive trustees led by Samuel Ruggles determined to transform Columbia from a small, parochial college into a cosmopolitan university. As a first step they hoped to liberalize Columbia's curriculum and improve the quality of its teaching and scholarship in certain areas such as the physical sciences.³ Their first effort

¹For an excellent background on this subject that emphasizes the independence of the Board from state interference, see generally JOHNS. WHITEHEAD, *THE SEPARATION OF COLLEGE AND STATE: COLUMBIA, DARTMOUTH, HARVARD, AND YALE, 1776-1876* (1973). The Board had been self-perpetuating since 1787. Furthermore, the income generated by Columbia's 48th street property (now Rockefeller Center) made the college financially independent by the mid-1800's, since the trustees were not forced to look to the state, any church, alumni or any other source for funds. *See Id.*

²A perusal of a few years' minutes of the meetings of the Board yields several examples of the trustees' micromanagement. For example, it was by board resolution that a student who, after three days of school, became too ill to continue his studies, was refunded his fifty-dollar tuition. 7 MINUTES OF THE BOARD OF TRUSTEES, COLUMBIA UNIVERSITY 538 (Mar. 1, 1880) (in *Columbiana Library*, Columbia University). The board referred to the Standing Committee, however, a proposal to replace the coat-checking system with student cubbyholes. 7 MINUTES OF THE BOARD OF TRUSTEES, COLUMBIA UNIVERSITY 531 (Feb. 2, 1880) (in *Columbiana Library*, Columbia University).

³See WHITEHEAD, *supra* note 1, at 159-60. Samuel Ruggles was one of nineteenth-century New York's great men, whose accomplishments range from designing Grammercy Park to participating in the construction of the Erie Railroad. See generally DANIEL G. BRINTON THOMPSON, *RUGGLES OF NEW YORK* (1946). The best description of Ruggles' efforts at Columbia is in the diary of his fellow trustee George Templeton Strong, Ruggles' son-in-law

failed when conservative trustees blocked the appointment of Wolcott Gibbs as a professor of Natural and Experimental Philosophy and Chemistry in 1854.⁴ Still, the progressive trustees emerged from the bitter struggle over Gibbs' appointment with increased determination, and in 1857 secured the appointment of Francis Lieber as professor of history and political science.⁵

The cornerstone of the progressives' plan for Columbia was the establishment of graduate schools, and a series of Board-appointed committees began to look into the issue in 1853.⁶ In 1857 the Board approved a proposal to establish three schools: a School of Letters, a School of Sciences and a School of Jurisprudence. Undergraduate students would enroll in one of these schools for their fourth year of study for the Bachelor of Arts degree, and be able to earn a Master of Arts degree after two additional years. The graduate-level curriculum of the School of Jurisprudence would include "Modern History; Political Economy; the Principles of Natural and International Law;" as well as "Civil and Common Law."⁷

The division of fourth-year undergraduates into separate schools ended in 1861, and the graduate programs in Letters and Sciences were never implemented. Meanwhile, the trustees modified their plan for the School of Jurisprudence, expanding the scope of instruction in private law so that the school would prepare its students for the bar.⁸ It is not entirely clear what prompted this shift in focus, but in his diary, George Strong expressed concerns that a non-professional graduate school would fail to attract students. "If we had the institution organized, fifty professors of the first force from Oxford or Boston in position with their lecture room swept and garnished, how many pupils would matriculate?" he asked. "How many A.B.'s just set free from college would consent to give two years more to 'University' studies?" Fewer than one per

and one of his greatest admirers and allies on the Board. GEORGET. STRONG, *THE DIARY OF GEORGETEMPLETON STRONG* (4 vols.) (Allan Nevins & Milton H. Thomas eds., 1952).

⁴See WHITEHEAD, *supra* note 1, at 159-60.

⁵See Nevins, *Note*, in 2 STRONG, *supra* note 3, at 328 n.6 (characterizing Lieber's appointment as the outgrowth of the failed Gibbs nomination).

⁶See THOMPSON, *supra* note 3, at 91-93.

⁷JULIUS GOEBEL JR., *A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY* 27 (1955).

⁸See *id.* at 27-29 and 391 n.186.

year, he guessed. Strong concluded, "This people is not yet ripe for higher education."⁹ In any event, not a non-professional School of Jurisprudence but the professional Columbia Law School was founded in 1858, and the trustees brought Theodore W. Dwight to Columbia as Professor of Municipal Law.¹⁰

Gordon Hoxie's history of the School of Political Science¹¹ begins, appropriately, in the School of Law. The efforts of the trustees in the 1850's brought about the establishment of the law school, Hoxie writes, "[b]ut where the Trustees had thought to establish a school of jurisprudence, that is to say, a center of legal theory, Theodore Dwight had instead founded a training school for professionals."¹² While the trustees intended for the law school to provide professional training, they hoped to supplement Dwight's private law training with courses in public law and legal theory. In 1860, Columbia College professors Francis Lieber and Charles Nairne joined the law school faculty, Lieber to teach political science and public law, and Nairne to teach moral philosophy.¹³ Their courses were optional, though, and unpopular with the students.¹⁴

There are two possible explanations for the trustees' continuing concern with the broadening of the law school curriculum. The first is that they believed theoretical or non-technical approaches to the law were an important part of professional legal education. Undoubtedly the trustees felt that a broader, more liberal education would benefit professional students. It is more

⁹2 STRONG, *supra* note 3, at 388 (March 3, 1958). Strong recommended that Columbia establish two professional schools: a law school and a "School of Applied Science," for training in engineering and related fields. These schools were to offer first-rate technical training, in order to attract students. "Exhibit a seductive bait of tangible material advantage," Strong notes, "and you will catch students." Then, "[h]aving caught them, liberalize both schools by additional courses of study, optional or imperative, gradually expanding and improving them, and in effect saying: We will furnish you with all the armory of the mere lawyer, on condition that you become also accomplished in kindred but higher pursuits." This was "our only practicable road toward a 'University.'" *Id.*

¹⁰See GOEBEL, *supra* note 7, at 29.

¹¹R. GORDON HOXIE ET. AL., A HISTORY OF THE FACULTY OF POLITICAL SCIENCE, COLUMBIA UNIVERSITY (1955). This work is part of the multi-volume Bicentennial History of the university, which also includes Goebel's history of the Law School.

¹²*Id.* at 4.

¹³See GOEBEL, *supra* note 7, at 46.

¹⁴See THOMPSON, *supra* note 3, at 95.

likely, however, that the trustees' principal concern was that a non-professional, academic graduate school was necessary to achieve their grandiose plans for a graduate research university on the European scale.¹⁵

The law school was the outgrowth of the trustees' earlier plans for non-professional graduate schools. Strong advocated professional training as a means to attract students, and to induce them to accept a broader education.¹⁶ Goebel writes of the appointments of Lieber and Nairne: "The significance of these appointments lies in the fact that almost at the moment of the birth of the new school, the Trustees sought to give it a university character by providing for something more than narrow technical training."¹⁷ The trustees felt that professional students would be well-served by a liberal education, but their overriding concern was Columbia's success as a graduate university.

Dwight's law school attracted students, and was the preeminent American law school until Harvard ultimately defined modern university legal education and exported its model to universities throughout the country, including Columbia. But Lieber's death in 1872, and the failure of the law school to broaden its curriculum in the manner Strong had hoped, led to the renewal of the university movement among the trustees.¹⁸ The result of their efforts was the arrival at Columbia of John Burgess, a man who not only shared the trustees' vision of the modern university, but who also had distinctive hopes for the future of legal education.

B. John W. Burgess.

In his 1934 autobiography, Burgess, born in Tennessee in 1844 remembers being deeply influenced by his adolescence during the Civil War.¹⁹ Burgess developed his interest in political science and public law while a student at Amherst College from 1864 to 1867. There he

¹⁵See HOXIE, *supra* note 11, at 4.

¹⁶See *supra* note 9 and accompanying text.

¹⁷GOEBEL, *supra* note 7, at 46.

¹⁸See HOXIE, *supra* note 11, at 4-5.

¹⁹See JOHN W. BURGESS, REMINISCENCES OF AN AMERICAN SCHOLAR (1934) [hereinafter BURGESS, REMINISCENCES].

was particularly influenced by political and moral philosopher Julius H. Seelye, the professor who became Burgess' mentor.²⁰ Burgess sought advanced instruction in political science and public law, and was discouraged to find that such instruction was available neither at Amherst nor at any other American college. In resignation, he turned to the study of private law.²¹ Burgess originally planned to attend Columbia Law School, where he hoped to find Lieber's coursework in political science a satisfying counterweight to Dwight's technical instruction.²² Illness, however, prevented his matriculation. Instead, Seelye arranged for him to spend two years as an apprentice to former judge and Amherst trustee Henry Morris at his law office in Springfield, Massachusetts. In mid-1869 he was admitted to the Massachusetts bar.²³

Although Burgess remembers the six years between his leaving Amherst in 1867 and his return as a professor in 1873 as frustratingly monotonous,²⁴ he gathered from them several strong impressions that were to influence his later efforts at Columbia. In particular, his work for Judge Morris led him to believe that training in private law was an essential prerequisite for studies in public law and political science. He wrote, "The study of public law and political science without a preliminary foundation of private law is very apt to lead to adherence to systems of absolutism in government and to a misunderstanding and undervaluation of individual liberty."²⁵

The combination of private law training with public law and political studies, Burgess felt, was the most desired path to a career in politics and public service. Absolutist tendencies, he felt, were the most alarming characteristic of non-lawyers in government.²⁶ He warned, "The whole trend of government, for example, in this country towards state socialism is coincident with the reduction in number of the lawyer class in our legislatures and

²⁰See *Id.* at 52-57.

²¹See *Id.* at 69-70.

²²See *Id.* at 70. Burgess nonetheless had no false hopes on that score. He wrote, "As a writer Professor Lieber instructed the United States and the world, but as a teacher he was a distinct failure." *Id.*

²³See *Id.* at 70-71.

²⁴See *Id.* at 67-68.

²⁵*Id.* at 71-72.

²⁶"[N]on-lawyer politicians[—] I will not say statesmen," he wrote. *Id.* at 72.

administrations."²⁷ In other words, Burgess did more than recognize that many lawyers became statesmen and that they should therefore be trained in public as well as private law. Burgess firmly felt that statesmen *should* be lawyers, and that private law was as necessary to a political science curriculum as political science was to a law school.

After what he considered a disappointing two-year stint as an instructor at Knox College in Illinois, Burgess left for Germany in the summer of 1871. At that time, it was not unusual for American students seeking graduate education to find it in Europe, and particularly in Germany. The German universities were at the forefront of higher education, and attempts to make modern universities of American colleges were invariably made with reference to the German schools.²⁸ During the two years he spent at the universities of Göttingen, Leipzig and Berlin, Burgess found the advanced instruction in political science he desired, and discovered an atmosphere of intellectualism and scholarly inquiry that had eluded him in the United States.²⁹

More than the substance of German political science, the structure of study at those three universities impressed Burgess. The German schools focused on the original research of both professors and students. Burgess particularly admired the freedom of inquiry that characterized those schools. Each student as well as professor was free to carry out research into the subject of his choosing. "The university's sole obligation [to the student] was to make it possible for him to pursue truth for its own sake and to prepare himself, if so he elected, for a profession or an academic career. The rest was up to him."³⁰ Burgess later remembered, "I had, after ten years of groping, at last found the instruction needed to prepare me for my life's work. . .

"³¹

²⁷*Id.*

²⁸See ALBERT SOMIT & JOSEPH TANENHAUS, *THE DEVELOPMENT OF POLITICAL SCIENCE: FROM BURGESS TO BEHAVIORALISM* 15 (1967).

²⁹See JOHN W. BURGESS, *THE FOUNDING OF THE SCHOOL OF POLITICAL SCIENCE* 358 (1930) [hereinafter BURGESS, *THE FOUNDING*].

³⁰SOMIT, *supra* note 28, at 15-16.

³¹BURGESS, *THE FOUNDING*, *supra* note 29, at 358.

Burgess returned to the United States in the summer of 1873 in order to assume a teaching position at Amherst. There, he embarked on what he called his "first attempt to establish a school of political science in the United States,"³² by taking on seven graduate students for one year's advanced work in history and political science, the first class of graduate students in Amherst's history.³³ Burgess' hopes for this fledgling program, at least as he remembered them in his autobiography, were every bit as grand as those of Ruggles and Strong at Columbia. He wrote:

A graduate department in history and political science would have been an entering wedge for graduate departments of metaphysics, philology, physics, and natural science. In a sentence, such a development would have grafted a German university faculty of philosophy on to the college faculty and have made the institution a combination of the last half of a German gymnasium and the philosophical faculty of a university.³⁴

Amherst's faculty were not so visionary, however, and in 1875 Amherst's president informed Burgess that his time would be better spent on the instruction of undergraduates.³⁵ The faculty, Burgess noted,

regarded the college as a place for discipline, not as a place for research. To them the truth had already been found. It was contained in the Bible, and it was the business of the college to give the preliminary training for acquiring and disseminating it. Research implied doubt. It implied that there was, at least, a great deal of truth still to be found, and it implied that the truth thought to have been already found was approximative and in continual need of revision and readjustment. Still more briefly expressed, they regarded research as more or less heretical.³⁶

Burgess concluded, "I was a prophet ahead of my time. . . ."³⁷

Thus it was with two defining convictions: that public servants required training in both private and public law; and that American colleges desperately needed to expand into graduate instruction and true scholarship, that Burgess came to Columbia in 1876. Burgess' efforts to improve scholarship in political science had been his principal occupation over the past seven

³²BURGESS, REMINISCENCES, *supra* note 19, at 137

³³*See Id.* at 146.

³⁴*Id.* at 147.

³⁵*See Id.*

³⁶*Id.* at 147-48.

³⁷*Id.* at 148.

years. Upon arriving at Columbia, however, he was once again confronted with the issue of legal education, and forced to reevaluate the role the study of private law was to play in his vision of graduate education in political science.

C. The founding of the School of Political Science.

The details of the events between Burgess' arrival at Columbia in 1876 and the opening of the School of Political Science in 1880 are elusive. Burgess' autobiography, published in 1934,³⁸ and his essay on the origin of the political science school, published in 1930,³⁹ offer important insights into Burgess' perceptions and aspirations, although he writes with the benefit of hindsight. His memory of details, moreover, is occasionally in conflict with secondary sources on the subject. The most important of those is Hoxie's 1955 *History of the Faculty of Political Science*,⁴⁰ Goebel's 1955 *History of the School of Law* also includes a section on Burgess and the events leading up to the founding of the School of Political Science.⁴¹ Finally, Munroe Smith, one of Burgess' closest collaborators in developing the new school, contributed a section on the graduate schools to *A History of Columbia University, 1754-1904*, published in 1904.⁴² Although Smith's account predates the later histories by fifty years, those three sources are in agreement regarding the sequence of events from 1876 to 1880. Their reliance on the same primary sources, principally minutes of the meetings of the Board of Trustees and the Law School Committee, suggests that where Burgess' account differs, it is his memory that is inaccurate. On the other hand, Smith's account of the aspirations of the founders for the School of Political Science parallels that of Burgess.

1. Burgess' attempts to reform the law school program.

³⁸BURGESS, REMINISCENCES, *supra* note 19.

³⁹BURGESS, THE FOUNDING, *supra* note 29.

⁴⁰HOXIE, *supra* note 11.

⁴¹GOEBEL, *supra* note 7, at 68-89.

⁴²Munroe Smith, *The University and the Non-professional Graduate Schools*, in A HISTORY OF COLUMBIA UNIVERSITY 1754-1904 (1904).

Burgess visited Columbia in 1876 at the invitation of Theodore Dwight, to give a series of lectures on political science at the law school.⁴³ Having heard the first of these lectures, Samuel Ruggles approached Burgess and announced with his characteristic brevity and certainty, "You are the man we have been looking for ever since Lieber's death. You must come to Columbia,"⁴⁴ Perhaps his prophecy was self-fulfilling, but nevertheless Ruggles had indeed discovered the man who would implement his dream of establishing non-professional graduate education at Columbia. Burgess, in turn, had found in the still dynamic and visionary 71-year-old "one of the most extraordinary men whom it has ever been my privilege to know."⁴⁵

Returning to Columbia to assume teaching duties in the undergraduate college, the School of Arts, as well as the School of Law, Burgess quickly focused on the latter school. His reasons were in part pragmatic: Burgess found the students in the School of Arts "indifferent and ill-prepared."⁴⁶ Although the law school did not yet require a college degree for admission, many of its students nonetheless came to Columbia with college studies behind them, including the preparation in French and German that Burgess deemed essential.⁴⁷ Furthermore, the law students took their studies seriously and arrived at Burgess' classes well-prepared, in stark contrast to the lazy gentlemen of the School of Arts, for whom early morning classes were uncivilized and afternoon classes in conflict with leisure activities.⁴⁸ Consequently, Burgess sought the permission of the trustees to enlist an assistant to undertake the bulk of his duties in the School of Arts, and concentrate on his teaching in the School of Law. The trustees consented to this arrangement, even though Burgess' salary was paid out of the endowment of the university, of which the School of Law was independent. Their consent suggests the desire of the trustees to

⁴³See HOXIE, *supra* note 11, at 5.

⁴⁴BURGESS, REMINISCENCES, *supra* note 19, at 151.

⁴⁵*Id.*

⁴⁶*Id.* at 179-80.

⁴⁷See *Id.* at 180-81.

⁴⁸See SOMIT, *supra* note 28, at 13-14.

integrate the law school with the university, in order that it become a true graduate department, rather than a loosely-affiliated trade school.⁴⁹

Burgess' interest in the law school, however, was far from incidental or merely serendipitous. Burgess did not merely want to teach political science to graduate students; he hoped to transform American legal education from purely technical professional training to a true science of jurisprudence.⁵⁰ He remembered his disappointment with the state of the law school at the time of his arrival:

[T]he teaching of Professor Dwight was an excellent preparation for the practice of private law, and the bar of New York felt its influence beneficially, but as a school of Jurisprudence, not only for imparting a knowledge of existing law, but for developing and improving the law as a science based on history, ethics, sociology, economics and philosophy, the Columbia school of that day left much to be desired.⁵¹

Burgess' calling, he felt, was "to neutralize the intense professionalism of the Law School by supplementing the studies in Private Law of a considerable number of the students with those studies in Ethics, History, and Public Law necessary to complete the science of Jurisprudence."⁵²

2. The division of political science from the law school.

According to Hoxie, "Burgess had in effect formulated the modern conception of legal education:"⁵³ one where public law and political science studies supplemented the traditional private law program. His failure to implement his plan was both unfortunate and puzzling. Burgess proposed to extend the law school program to three years, with his public law and political science coursework comprising the principal element of the third-year curriculum.⁵⁴ By this means, he felt, students would emerge from the law school with a well-rounded education in jurisprudence.

⁴⁹See BURGESS, REMINISCENCES, *supra* note 19, at 182.

⁵⁰See HOXIE, *supra* note 11, at 9.

⁵¹BURGESS, REMINISCENCES, *supra* note 19, at 163.

⁵²GOEBEL, *supra* note 7, at 87.

⁵³HOXIE, *supra* note 11, at 9.

⁵⁴See Smith, *supra* note 42, at 224-25.

Burgess recollected that "such a purpose and function were hardly conceived of either by faculty or by trustees. That was the problem of the future."⁵⁵ He was not, though, as isolated in his vision as he thought. The idea of a third year of study in the law school had been brewing for some years among the trustees; the board had resolved in 1874 to add a third year to the law school course leading to a Master of Laws degree. That plan was never implemented,⁵⁶ but on February 7, 1876, the board resolved to request that Dwight propose a plan incorporating Burgess' coursework into the law school curriculum, either into the existing two year course or into a third year.⁵⁷ Discussing the establishment of a chair, to which Burgess was immediately nominated, to fulfill the same function as Lieber's in the School of Law and the School of Arts, the trustees noted the importance of Lieber's (and Burgess') subjects to legal education.⁵⁸

Nor was Dwight as staunchly opposed to a broadening of his curriculum as Burgess supposed. In March of 1876 Dwight himself, in response to the trustees' request, had proposed a year-long program for law school graduates leading to a Master of Laws degree, principally comprising courses in public law and government.⁵⁹ He opposed, however, trustee Stephen Nash's counter-proposal that the public law courses be spread through a three-year program towards the Bachelor of Laws. Dwight felt that the two disciplines should be kept separate, perhaps out of fear that too few students would consent to a prolonged program of study.⁶⁰ Eventually, the discussion was tabled on the motion of conservative trustee Gouverneur M. Ogden; Burgess' impression, however, was that Dwight was simply opposed to adding a third year to the law school curriculum in any form.⁶¹ Burgess perceived Dwight's opposition as fatal,

⁵⁵BURGESS, REMINISCENCES, *supra* note 19, at 163.

⁵⁶See HOXIE, *supra* note 11, at 8. A third year was added to the Harvard Law School program in 1876, as part of the reforms instituted there by Christopher Columbus Langdell and Charles W. Eliot. See, e.g., CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL: 1817-1917, at 32 (1918).

⁵⁷See 7 MINUTES OF THE BOARD OF TRUSTEES, COLUMBIA UNIVERSITY 171 (Feb. 7, 1876) (in Columbiana Library, Columbia University).

⁵⁸See 7 MINUTES OF THE BOARD OF TRUSTEES, COLUMBIA UNIVERSITY 192-94 (Apr. 3, 1878) (in Columbiana Library, Columbia University).

⁵⁹See GOEBEL, *supra* note 7, at 73-74.

⁶⁰See *Id.* at 74.

⁶¹See *Id.*; see also HOXIE, *supra* note 11, at 8-9.

writing, "The peculiar relation of the Law School to the college at that time . . . made his opposition to any project for change therein fatal to the undertaking."⁶²

Dwight may not have been the brick wall Burgess perceived, but it was the perception that mattered: Burgess turned his sights away from the law school. Faced with what he referred to as "the cramping, unbearable situation" of working within Columbia's existing institutions, Burgess decided that he needed "to found a new faculty and a new school for the study, teaching, and development of the historical, political, economic, and social sciences."⁶³ Burgess writes that he dared not suggest "so progressive an idea,"⁶⁴ and was delighted when, at a meeting at Ruggles' house in February of 1879,⁶⁵ Ruggles responded to Burgess' description of his frustrations by announcing, "Well, I do not see but we shall have to found a school for the political sciences separate from both the School of Arts and the School of Law."⁶⁶

It is not clear why the trustees were so quick to abandon their project in the law school in favor of a separate school of political science rather than reach a compromise with Dwight in 1876. There is no evidence that the trustees believed that instruction in public and private law should be kept separate; neither they nor Dwight exhibited anything resembling the Harvard Law School's insistence on an exclusively private-law curriculum.⁶⁷ Yet although the trustees advocated the broadening of the law school curriculum to include public law and political science as early as Lieber's appointment in 1860, they were not primarily concerned with improving legal education. Graduate education in political science and public law was part of their plan to turn Columbia College into a research university.⁶⁸ By 1879, they relied on Burgess to implement that plan. When Burgess concluded that he was unable to work with Dwight, therefore,

⁶²BURGESS, REMINISCENCES, *supra* note 19, at 187. Burgess appears to refer to Dwight's autonomy in running the law school, derived from the school's financial independence from the University, and from the fact that Dwight handled nearly all the teaching in the law school himself. *See id.* at 70.

⁶³*Id.* at 187.

⁶⁴*Id.*

⁶⁵Burgess remembers the date as April, 1880, but Goebel uses a letter to Burgess from another man attending the meeting to place it a year earlier. GOEBEL, *supra* note 7, at 422 n.153.

⁶⁶BURGESS, REMINISCENCES, *supra* note 19, at 189.

⁶⁷On Harvard, see, e.g., Comment, *Ernst Freund—Pioneer of Administrative Law*, 29 U. CHI. L. REV. 755, 763-70 (1962).

⁶⁸*See supra* text accompanying notes 1-18.

no philosophy of legal education prevented their supporting the division of public and private law. It is likely that Ruggles and his allies were as willing to have a graduate program in political science and public law established separate from the law school as within it. Either way they achieved their objective: non-professional, research-oriented graduate studies.

3. The *Ecole libre* and training for the civil service.

Burgess also found a model for his proposed school that winter: the *Ecole libre des Sciences politiques* in Paris. The *Ecole libre* was founded in Paris in 1877 with the explicit purpose of educating the elite rungs of the French civil service. Burgess remembers hearing of the *Ecole libre* during his February, 1879 meeting with Ruggles, from another of Ruggles' guests.⁶⁹ In fact, Burgess first learned of the school several weeks earlier, in a letter from his former student Clifford Bateman, who had gone to Germany on Burgess' advice for advanced study in political science.⁷⁰ In any event, Burgess seized upon the *Ecole libre* as a model for his proposed new school, and supplemented his academic goals with a secondary purpose that had always been near to his heart: professional training for public service.⁷¹

The movement to reform the American civil service was at its height at this time. In response to the widespread corruption of the spoils system, reformists advocated the professionalization of the civil service, so that career advancement based on merit and competitive examinations would replace patronage. Their efforts led to the enactment of the Civil Service Act of 1883.⁷² The perceived need to train men for a new, professional civil service played a part in

⁶⁹See BURGESS, REMINISCENCES, *supra* note 19, at 189.

⁷⁰See HOXIE, *supra* note 11, at 10 (citing December 30, 1878 letter from Bateman to Burgess).

⁷¹See *supra* text accompanying notes 25-27. The large number of public servants coming out of law schools and law offices was behind his earliest ideas of marrying his political science curriculum to private law studies. The hope that a new political science school might provide an alternative route to public service may have alleviated Burgess' frustrations at his inability to implement his program at the law school. This plan would solve the problem of providing political science instruction to public servants, but not the problem of public servants not trained in private law, to which Burgess referred in his autobiography. See *id.* Burgess never ceased advocating the registration of law students for courses in the School of Political Science.

⁷²See, e.g., THOMAS L. HASKELL, THE EMERGENCE OF PROFESSIONAL SOCIAL SCIENCE 120 (1977). See generally ARI HOOGENBOOM, OUTLAWING THE SPOILS: A HISTORY OF THE CIVIL SERVICE REFORM MOVEMENT (1961).

the founding of political science departments in several American universities in the 1880's, as well as the founding of the School of Political Science at Columbia.⁷³

4. The founding of the School of Political Science.

A year passed before Burgess' discussion with Ruggles produced any concrete results. On February 20, 1880, Burgess submitted a proposal for an advanced course of study in political science to Columbia's President Barnard. In it he referred to a new department, rather than a new school. This department would offer courses to undergraduates in their senior year, as well as to graduate students preparing for a master of arts or doctor of philosophy degree.⁷⁴

Burgess provided that the new department would be open to law students, and that any student with a bachelor of law degree from Columbia or any other law school would earn a degree of "doctor of civil laws" upon completing the course of study in the political science department.⁷⁵

Finally, Burgess emphasized the dual purpose of the department: not only to develop scholarship in political science, but also to train professional civil servants. He wrote:

In the history of the nation it is so, not only because the Republic has now reached those mighty proportions demanding the finest training, as well as the finest talent, for the successful management of its affairs, but because the Government itself has recognized this fact, and in its Civil Service reforms, which, I think, are now fairly planted and destined, under the proper influences to a noble growth, has opened the way for an honorable career to the young men of the nation in the governmental service, which may be successfully pursued by the best intelligence, skill, and fidelity, offering itself without any reference to political influence or patronage.⁷⁶

Barnard found the professional aspect of the proposed department particularly appealing. Incorporating Burgess' letter into his own proposal to the trustees, Barnard characterized the proposed course of study as a "definitely prescribed curriculum of instruction, designed to prepare young men for public life whether in the Civil Service at home or abroad, or in the legislatures of the States or of the nation."⁷⁷ Furthermore, Barnard made a fundamental

⁷³See *infra* text accompanying notes 94-95.

⁷⁴See Smith, *supra* note 42, at 223-24.

⁷⁵See *Id.*

⁷⁶HOXIE, *supra* note 11, at 11.

⁷⁷*Id.* at 13.

alteration in Burgess' proposal. Rather than a department, Barnard referred to a separate school: "in addition to the special schools connected with the College already in existence, a new one of an original character."⁷⁸ Later, the committee designed to assess the merits of establishing the school noted,

There is . . . greatly wanted in this country a class of men better instructed in the principles of a correct Political Economy, in Political and Constitutional History, and in Constitutional, International, and Administrative Law, than most of those who control the destinies of our people at this time can justly claim to be.⁷⁹

Ruggles suggested that Burgess spend the summer of 1880 in Paris, studying the *Ecole libre*. Burgess later concluded, "I had never before received more profit and enjoyment from any two months of educational experience than from my life during those weeks," praising the quality of the professors, the breadth of the curriculum, and the rigor of the instruction.⁸⁰ While he was there, in May of 1880, the trustees' committee resolved "[t]hat there be established . . . a school designed to prepare young men for the duties of public life, to be entitled a School of Political Science."⁸¹ Ruggles wired Burgess of the committee's decision: "Thank God, the university is born. Go ahead."⁸²

Having received word from New York, Burgess set out to develop a detailed program for the new school. With a trio of his best former students, all of whom had been studying political science education in Europe, Burgess went to Switzerland for a week of intensive planning before returning to Columbia. The School of Political Science opened in the fall of 1880, with Burgess and his three colleagues as its faculty. They taught English history, economics, Roman law, comparative jurisprudence, comparative administrative law of the European States and of the United States of America, political history of Continental Europe and of

⁷⁸*Id.*

⁷⁹HOXIE, *supra* note 11, at 15.

⁸⁰BURGESS, THE FOUNDING, *supra* note 29, at 371.

⁸¹HOXIE, *supra* note 11, at 15.

⁸²BURGESS, THE FOUNDING, *supra* note 29, at 371.

the United States, the comparative constitutional law of the European States and of the United States, international law, and the history of diplomacy.⁸³

II. The effect of the school on political science, public service and the law.

The School of Political Science embodied different aspirations of different people.

For the trustees, the institution of graduate education in political science represented the transformation of Columbia from a college to a university.⁸⁴ Burgess had several goals for the new school. First, Burgess and the trustees expected the school to "develop all branches of the political sciences."⁸⁵ In this respect Burgess ultimately succeeded; his institutional innovation set the stage for the substantive development of the discipline in the following decades. Second, the school was devoted to training students for careers in public service, a purpose also particularly important to Barnard. The school never attracted students seeking such training, however, and quickly abandoned this purpose. Finally, Burgess intended that the instruction in the political science school supplement the instruction in private law at the law school. The combination of public and private law, Burgess felt, would best prepare students for public service as well as private practice. Despite Burgess' efforts to keep the political science school open to law students, the division of political science and public law into a separate facility proved fatal to a combined private and public law course until the next century.

A. Political Science

Burgess is best known for his contribution to the development of political science as a discipline, but his success in this respect was principally institutional. By founding the School of Political Science he established political science as a graduate field of study. Columbia's was

⁸³See BURGESS, REMINISCENCES, *supra* note 19, at 198-99.

⁸⁴Ruggles' exclamation to Burgess upon the trustees' approval of the proposal for the new school, "Thank God, the university is born," *see supra* text accompanying note 82, most succinctly encapsulates the significance of the founding of the political science school to the trustees.

⁸⁵Smith, *supra* note 42, at 224.

the first graduate school of political science in the United States, and a model for other schools throughout the country.⁸⁶ Burgess' institutional achievements also included the organization of the Academy of Political Science in 1881 and the establishment of the Political Science Quarterly in 1886.⁸⁷

Burgess' own scholarship is virtually ignored; "for all his great influence as a university administrator and a founder of political science, [Burgess] left no intellectual disciples at all."⁸⁸ In terms of method, moreover, Burgess' record is mixed. Burgess had sophisticated aspirations for the discipline in that respect; he hoped to reproduce both the freedom and the intellectual rigor of the German schools. In that first endeavor he succeeded: the breadth and interdisciplinary nature of the new school's curriculum, as well as Burgess' advocacy of cross-registration among the schools of the university, reflected his commitment to the student's freedom of choice.⁸⁹ In his desire for a truly systematic, scientific inquiry into politics, however, Burgess was impeded by the concern with democratic outcomes that had characterized American political studies since the American Revolution.

During the revolutionary period, political science was mixed with civics education, that is to say, training in American government and civic virtues. Bernard Crick characterizes the teaching of politics before the Civil War as "prescribed and rigid, narrow and school-like."⁹⁰ Alfred Somit similarly distinguishes the "ethically oriented, didactic" teaching of politics in American colleges from the "comparative, systematic, and highly professional analysis of data" which characterized German political science.⁹¹ The first scholar to introduce systematic,

⁸⁶See SOMIT, *supra* note 28, at 21.

⁸⁷See HOXIE, *supra* note 11, at 41-42.

⁸⁸BERNARD CRICK, THE AMERICAN SCIENCE OF POLITICS: ITS ORIGINS AND CONDITIONS 31 (1959). See also SOMIT, *supra* note 28, at 3 (lamenting, "How many persons remember John W. Burgess other than as a ridiculously fanatical Germanophile?")

⁸⁹See, e.g., HOXIE, *supra* note 11, at 24.

⁹⁰CRICK, *supra* note 85, at 12.

⁹¹SOMIT, *supra* note 28, at 8. Somit continues:

Instruction also tended to be remorselessly didactic. Even the advanced courses in ethics, philosophy, religion, economics, and politics- often taught by the president himself- were manifestly designed to ensure that the students developed into God-fearing, morally-upright, sound-thinking citizens What they passed as political science would be called "education for democratic citizenship" by a later and more sophisticated generation.

scientific, German political science to an American audience was Francis Lieber. His *Civil Liberty and Self Government*, published in 1853, was "easily the most systematic and well grounded study of politics to emerge from an American university" by that time.⁹² His conclusions were Jeffersonian, but he "offered grounds- indeed novel grounds- for propositions whose native grounding was beginning to oscillate only between habit and incantation."⁹³

Like Lieber, Burgess brought with him to Columbia the experience of the discipline and intellectual rigor of political studies in Germany, and hoped to introduce such a scientific method to study in the School of Political Science. In his 1934 autobiography, Burgess remembers his achievement with satisfaction, and with words that recall his earlier, unsuccessful attempt to implement graduate education at Amherst.

The first principle of the system of education which the faculty of Political Science followed in all its work was free and untrammelled individual research and complete freedom of instruction in imparting the results of such research. Their attitude towards what was considered established truth was one of question, if not of distrust, as being something produced by the thought of an end, therefore, at best only an approximation to truth, and needing continuous reëxamination and readjustment under purer light and changing conditions. The progressive development of truth, instead of the monotonous maintenance of so-called established truth, was our principle.⁹⁴

In fact, the confused nature of Burgess' understanding of the school's purpose compromised the integrity of its scholarship: his concern with producing public servants dedicated to democracy impeded Burgess' efforts to develop an objective science of politics.

This confusion was not Burgess' alone; it was a concern that affected to some degree all of the political science departments springing up in American colleges and universities. Andrew D. White, the first president of Cornell, concluded an address given to commemorate the third anniversary of the 1876 founding of Johns Hopkins:

I would rather send forth one well-trained young man, sturdy in the town meeting, *patriotic* in the caucus- than a hundred of the gorgeous and gifted young cynics who

Id. at 13.

⁹²CRICK, *supra* note 85, at 16.

⁹³*Id.*

⁹⁴BURGESS, REMINISCENCES, *supra* note 19, at 203.

lounge about the clubs, talk about 'Art' and 'Culture' and wonder why the country persists in going to the bad.⁹⁵

Similarly, the political science department at the University of Michigan and the Wharton School of Finance and Economics at the University of Pennsylvania, both founded in 1881, were initially intended train students for careers in public service, as well as to develop scholarship in political science.⁹⁶

It was not until the Progressive Era of the early twentieth century that American political science achieved the level of sophistication that allowed it to rival its European counterpart.⁹⁷ This modern political science had its intellectual roots not in the work of the departments and schools of political science such as that of Burgess at Columbia, but in the field of sociology, in the work of Herbert Spencer, William Graham Sumner and Lester Frank Ward, whose work was influenced more by Charles Darwin than by German political theorists.⁹⁸ It was characterized by scientific methodology, such that a "new amorality became almost a requisite for professional respect."⁹⁹ In comparison, Burgess' work seems parochial and unsophisticated.¹⁰⁰ In sum, "John W. Burgess . . . did much to establish the academic respectability of political science, but contributed little to what became its dominant techniques and concerns."¹⁰¹

B. Training for public service and its relation to legal education.

1. Training for public service in the School of Political Science.

John Burgess and the School of Political Science were for the discipline of political science a qualified success. But what of that second purpose identified by the trustees for the new school: the training of young men for public service? Even as the concern with transmitting

⁹⁵CRICK, *supra* note 85, at 23-24 (emphasis added). Crick refers to similar sentiments expressed in the private correspondence of university administrators to support his conclusion that assertions such as White's were genuine, and not merely "good bait for university benefactors." *Id.* at 22-23.

⁹⁶*See id.* at 24-25.

⁹⁷*See generally id.* at 37-70.

⁹⁸*See id.* at 67, 95-97.

⁹⁹*Id.* at 73-74 (quoting Dwight Waldo).

¹⁰⁰*See Id.* at 97-99.

¹⁰¹*Id.* at 97.

democratic values inhibited the development of political science as an academic discipline, the idea of a school specifically devoted to training professional civil servants never took hold. The School of Political Science never acquired a professional nature; few non-law students enrolled in the School of Political Science for training for public service.¹⁰² Evaluating the School of Political Science in 1904, Monroe Smith noted that while the political science school attracted a great number of law students,

[i]n the task of developing an independent body of students the Faculty had been less successful. In 1890 the number studying exclusively in the school of Political Science was little greater than in 1884. The secondary aim of its Faculty, to create a professional school to train young men for governmental service, had not been realized; and the skepticism with which the Trustees had regarded this experiment was shown to be justified. Neither in the nation nor in the states was the civil service on such a basis that a young man, however well prepared, could enter it with the prospect of an assured and important career.¹⁰³

Even President Barnard, who in 1880 had shown the greatest enthusiasm for the professional purpose of the new school and had referred to the school as professional in nature at least until 1882,¹⁰⁴ stated in 1886 that the school was most like a German "Philosophical Faculty, by which it is meant . . . the faculty which teaches all subjects non-professional."¹⁰⁵ The school originally designed "to qualify young men for the duties of public life" broadened its purpose by 1884, according to the *Columbia Handbook*, to include the training of journalists in economics and public law.¹⁰⁶

In 1887, the *Handbook* included a final mission: "to educate teachers of political science."¹⁰⁷ It would ultimately be these who would make up the "independent body of students" that the school had lacked. In less than a decade, the School of Political Science had acquired the form in which it would create its legacy: as the first graduate school of political science in the

¹⁰²See HOXIE, *supra* note 11, at 29.

¹⁰³Smith, *supra* note 42, at 272-73.

¹⁰⁴See HOXIE, *supra* note 11, at 38.

¹⁰⁵*Id.* (quoting Annual Report, 1886, at 49-52).

¹⁰⁶*Id.* at 29 (quoting Columbia College Handbook of Information, 1884).

¹⁰⁷*Id.* (quoting *Handbook*, 1887).

United States, a non-professional school devoted to the production of political science scholarship and scholars.

As such, the school earned Burgess his legacy as a "'father' of American political science."¹⁰⁸ But in his efforts to improve the training of American public servants, Burgess ultimately failed. The failure, though, was not in the political science school's inability to attract students seeking to make the civil service their profession. Burgess' failure occurred earlier, with the division of public law and political science from the law school. While future public servants did not seek degrees from the political science school, they continued to enroll in the law school. Smith noted,

In this country . . . law is the chief avenue to political life, and the lawyers are the political class; and the Faculty of Political science has done far more "to prepare young men for the duties of public life" by teaching the students in the Law School those things which every man in public life ought to know, but which the colleges cannot teach adequately and the schools of law, as a rule, do not teach at all, than it could have done by training an equal number of young men for departmental clerkships.¹⁰⁹

Furthermore, a great number of law students took classes in the political science school. By 1890, of the ninety-eight students at the School of Political Science, seventy-five were concurrently registered at the School of Law; those seventy-five made up eighteen percent of the student body of the law school.¹¹⁰

Early in his career, Burgess recognized the significance of lawyers in public service.¹¹¹ Burgess sought to address the irrationality of training future public officials in exclusively private, judge-made law by introducing public law and political science into law school curricula. In other words, during his first years at Columbia, Burgess did not seek to establish his program within the framework of the School of Law simply because the law students were better-

¹⁰⁸SOMIT, *supra* note 28, at 3.

¹⁰⁹Smith, *supra* note 42, at 273.

¹¹⁰See Letter from John W. Burgess to Seth Low, President, Columbia University (Jan. 16, 1890) (in Burgess collection, Columbian Library, Columbia University); Smith, *supra* note 42, at 272.

¹¹¹See *infra* text accompanying note 139.

prepared and more diligent students than the undergraduates. Burgess realized that, because law schools trained public servants, his courses were particularly appropriate to the law school.

Burgess further felt that public servants *should* be lawyers,¹¹² and he did not abandon this belief when his perception of Dwight's opposition led him to abandon his hopes to reform the School of Law and eventually found the School of Political Science. Even as he embraced the *Ecole libre* and the French model of specialized training for the professional civil service, Burgess evidently still felt that the School of Political Science was meant to supplement the training in the School of Law, more than function as an independent entity. In 1893 he wrote, "The purpose for which the School of Political Science was created [was] the education of the rulers of the country—for the lawyers are the rulers of the country—in those subjects which will properly prepare them for their highest work."¹¹³ Thus, Burgess intended that law students be permitted to register for courses in the School of Political Science, an idea in-keeping with his more general, academic goal that the school offer a broad, interdisciplinary program and that students have great latitude in planning their studies, both characteristics of the German universities.¹¹⁴ In 1891, Burgess not only still felt that the law students at the political science school were the most talented of his students, but also reiterated his core belief that a combination of public and private law studies led to the most complete and "scientific" understanding of both fields.¹¹⁵

2. The role of political science and public law in legal education, 1880-1891.

Histories of political science tend to overlook the role of legal education in Burgess' plan for the School of Political Science. For Burgess, though, the success of his new school depended in large part on the accessibility of public law and political science studies to the students

¹¹²See *supra* text accompanying notes 25-27.

¹¹³Smith, *supra* note 42, at 225 (emphasis added).

¹¹⁴See, e.g., SOMIT, *supra* note 28, at 15-16.

¹¹⁵See Letter from John W. Burgess to Seth Low, President, Columbia University (Jul. 29, 1891) (in Burgess collection, Columbian Library, Columbia University).

at the law school. The founding of the School of Political Science did not represent an abrupt divorce of those subjects from the law school. The courses at the political science school were open to law students, and Burgess maintained his teaching responsibilities in the law school. Dwight, for his part, favored the placement of public law studies in a school separate from the law school, but did not object to law students' enrolling in those courses. Since the law school tuition was lower than that of the political science school, law students enrolled in courses at both schools were required to pay the difference. When this extra fee deterred some students from attending Munroe Smith's lectures on Roman law, it was upon Dwight's recommendation that the trustees arranged for Smith to give his lectures in the law school as well.¹¹⁶

In 1883, the law school moved from its downtown location to the main college campus at 49th street, where the political science school was located, making it more practical for students to attend classes in both schools. Burgess remembered the move as his own idea,¹¹⁷ and considered it a victory for both schools. Emphasizing his belief that the instruction of *law* students was one of the principal purposes of the political science school, he wrote that the move "was of especial value in the success of the School of Political Science, in that it gave the students of the Law School much more favorable opportunity to attend the instruction given by the faculty of Political Science in public law and comparative jurisprudence."¹¹⁸ As for the law school, he wrote, "From that moment dates the beginning of the change of the School of Law into a real School of Jurisprudence."¹¹⁹ Burgess' remarks show his desire that the division between the law school and the School of Political Science be merely formal. The success of both schools, he felt, rested in their interdependence.

The next upheaval began in 1888, when the trustees resolved to extend the law school program to three years, beginning with the students entering the school in the fall of 1888.

¹¹⁶See GOEBEL, *supra* note 7, at 90-91. In 1884, the law school tuition was raised to match the tuition at the political science school, so that there was no longer any disincentive to enrolling in courses at both schools. See *Id.* at 96. The reason for the initial disparity is not clear.

¹¹⁷See BURGESS, REMINISCENCES, *supra* note 19, at 216.

¹¹⁸*Id.* at 217.

¹¹⁹*Id.*

The expansion of the law school program would permit not only the advanced study of various branches of private law, but also more comprehensive study of public, international and comparative law.¹²⁰ The provisional third year curriculum, instituted in the fall of 1890, allowed students to choose between a Division I, which contained courses in subjects such as corporations, wills, and the law of negotiable paper, and Division II, whose courses were the same as those taught in the second and third years of the School of Political Science.¹²¹ One of the new professors to join the faculty in order to implement the extended curriculum was Harvard's William Keener.¹²²

The provisional plan was only good for a year, though, and the debate over the final plan brought Dwight into heated conflict with the rest of the university. On February 6, 1890, Seth Low succeeded Barnard as university president after Barnard's resignation due to illness. Low was committed to the development of Columbia as a university. In 1890 he oversaw the establishment of two new non-professional graduate schools, the School of Philosophy and the School of Pure Science, as well as an overarching supervisory body called the University Council.¹²³ Furthermore, Low advocated several changes within the law school, including the introduction of required coursework in public law. His proposed curriculum included courses in administrative law and international law in the second year as well as comparative and international law in the third year.¹²⁴ As in 1876, Dwight opposed extending the course for the LL.B. to three years, maintaining his belief that a third year of study should lead to a separate graduate degree, and that courses in public law should remain optional.¹²⁵ Now, his opposition to Low's proposal led to Dwight's resignation at the close of the 1890-1891 school year.¹²⁶

¹²⁰See GOEBEL, *supra* note 7, at 111-12.

¹²¹See *Id.* at 115-16.

¹²²See *Id.* at 118.

¹²³See *Id.* at 113-14.

¹²⁴See *Id.* at 125-26.

¹²⁵See *Id.* at 108.

¹²⁶See *Id.* at 131.

3. Public law and political science in the law school under Keener.

When Dwight retired, his allies at the law school also left Columbia. Their departure paved the way for Keener to institute the changes that would bring the case method and other elements of the Harvard model to Columbia.¹²⁷ The new course provided for instruction in public law, but only as an optional supplement to the core curriculum of private law courses. In addition to ten hours per week of required courses, first-year students were offered "optional" courses in Roman Law, the Constitutional History of England, and the Constitutional History of the United States, which did not count towards the law degree. The second year comprised six required hours per week plus six elective hours, which did count towards the degree. Administrative Law, History of European Law and Comparative Constitutional Law were among the electives offered. The third year courses were all elective, and were to total ten hours per week. The electives included public international law and a course on comparative Roman and English law, in addition to ten private law subjects.¹²⁸ Furthermore, the University Council instituted a program that would combine the three-year law course with one year in the School of Political Science and lead to a Master of Arts degree in addition to the law degree.¹²⁹

In the end, therefore, the public law component of the law curriculum came to resemble Dwight's model far closer than Burgess': public law was either optional or part of a graduate course. Burgess fought hard to maintain a connection between the law school and the School of Political Science. He exhibited the manner in which he held to his original vision of a combined private law- public law course, well after the latter courses had been placed in a separate school, in a long letter written by Burgess to President Low in 1893.¹³⁰ This letter is the best evidence that Burgess' vision of legal education was remarkably sophisticated long before the time of the publication of his memoirs in 1934.

¹²⁷See generally *id.* at 135-58.

¹²⁸See *id.* at 148-49.

¹²⁹See *id.* at 157-58.

¹³⁰Letter from John W. Burgess to Seth Low, President, Columbia University (Jan. 9, 1893) (in Burgess collection, Columbian Library, Columbia University).

Burgess' letter responded to a proposal of the law faculty to increase the program of required courses for the first-year law students from ten hours to thirteen, as well as increase the number of elective hours for second and third-year students. Low asked the political science faculty to comment on this proposal, and Burgess replied on their behalf. Rather than discuss the effect of such changes on the political science school and students, Burgess took the liberty to ask and answer the question, "What will be the effect of these proposed changes upon the character of the legal education tendered by Columbia?"¹³¹ To justify such a broad mandate, he stated that the School of Law "is not, at Columbia, the sole body charged with legal instruction. It is fully recognized at Columbia that international, constitutional and administrative law, and historical and comparative jurisprudence, are essentially legal studies and constitute an important part of the juristic curriculum."¹³² He noted that the professors in those subjects all taught in the School of Political Science, but were all lawyers, and continued, "It is their opinion and ours that in an ideal legal curriculum all of the studies just mentioned should be required studies."¹³³

Burgess suggested a wide range of courses that belonged in this broad curriculum. One was legal history. He characterized the case method as the study of the historical development of the law, and claimed that such "historical method, however, is equally essential to the intelligent study of public law."¹³⁴ Political theory was another, along with economics. Burgess criticized both bar and bench for disguising as "natural rights" law what was in fact poor ("unscientific") economic analysis in property law. Instead, lawyers should recognize the crucial role of economics in areas of statutory law such as railroad regulation as well as in the common law of property, and receive training in economics as part of their legal education in order to use economic analysis in a sophisticated manner.¹³⁵

¹³¹*Id.* at 1.

¹³²*Id.* at 1-2.

¹³³*Id.* at 2.

¹³⁴*Id.*

¹³⁵*See Id.* at 3-4.

Burgess knew that "in establishing such a system of legal education, we do not question that Columbia College would outrun the demands of even educated opinion in this country." He was nevertheless confident "that the American university law schools of the twentieth century will include all the subjects we have mentioned—and all as required studies."¹³⁶ In any case, he concluded,

If it be deemed unwise in the present state of American opinion to take so radical a step today, the least Columbia College can do is to leave room in its law course for the election of public law and comparative jurisprudence, constitutional and diplomatic history, political theories, economics and finance.¹³⁷

He worried that with an increased required courseload in the law school, first-year students would only be able to take one of European constitutional history, American constitutional history, and economics; already students had had to abandon one of the three, usually economics, when the required first-year program was increased to ten hours. He further noted that students were unprepared to study these subjects in sufficient depth as undergraduates.¹³⁸

Burgess was not merely concerned with the training of law students for the practice of law. An essential element of his argument centered on the law students who entered public service. He wrote,

Law is becoming with us an avenue into most varied pursuits. It has always been the great highway into public life. Our laws are made and administered, in the nation and in the commonwealths, and our diplomatic relations with other countries are conducted, by lawyers. Even where the lawyers are a minority of the members of a legislature, it will be found that they really frame laws in committee; and even where a poet represents our country in a foreign court, there will be found at his side a lawyer.¹³⁹

Those lawyers in particular needed to be trained in public law as well as private, and in constitutional history, political theory and economics. For that reason, the law school needed to structure its program to allow its students to pursue those studies.¹⁴⁰

Burgess lamented,

¹³⁶*Id.* at 4-5.

¹³⁷*Id.* at 5.

¹³⁸*See Id.* at 9.

¹³⁹*Id.* at 6.

¹⁴⁰*See Id.* at 7.

It seems to us that the Law Faculty is inclined to deal with its students in classes, and not as individuals; and that in so doing, it departs from the fundamental principle of the university. It seems to us, further, that it is disposed to recognize a single class only, namely, that of the practicing lawyers.¹⁴¹

Again, he called upon the liberal and open idea of the university to justify his expectation, an expectation which underlay his support for a political science school separate from the law school, that students would be able to enjoy the offerings of both schools.¹⁴²

4. Conclusion: the fate of public law instruction in the law school.

Dwight's departure and Keener's arrival did little to alter the treatment of public law as a secondary discipline in the law school. The law school offered several courses in areas of public law, but only as electives. The courses at the School of Political Science were open to law students, but the expansion of the required courseload at the law school made enrolling in courses at the political science school increasingly difficult. The development of public law in the law school was gradual. Harlan Fiske Stone, who became dean of the law school in 1910, advocated the development of legal research, and the *improvement* of the law, as a non-professional aim of the law school.¹⁴³ In 1928 a group of faculty including Underhill Moore identified two non-professional purposes for the law school: legal research and training for public service.¹⁴⁴ It was not until the mid-1930's that public law was seen as an important element of the law school curriculum.¹⁴⁵ That change, which Goebel attributes to the expansion of government in that decade, as well as the decrease in hiring by law offices during the Great Depression, was signaled by the addition to the faculty of Walter Gellhorn and Herbert Wechsler.¹⁴⁶ Their courses in federal jurisdiction and criminal law emphasized the role of the legislature, as well as the judiciary,

¹⁴¹*Id.* at 8.

¹⁴²*See Id.* at 14.

¹⁴³*See* GOEBEL, *supra* note 7, at 228.

¹⁴⁴*See Id.* at 301.

¹⁴⁵*See Id.* at 325.

¹⁴⁶*See Id.*

in shaping the law.¹⁴⁷ Finally, in 1935, the faculty adopted a rule requiring that second and third-year law students complete twelve semester hours of public law coursework in the law school.¹⁴⁸

Not until sixty years after Burgess' arrival at Columbia did the Columbia Law School become the "school of jurisprudence" Burgess had imagined. Burgess had decided early on that his efforts to bring about such a transformation of the law school were futile, and founded the School of Political Science as a result. That school gradually developed its identity as an academic, non-professional graduate school, and its founding was an important step in the development of American political science as a discipline. Burgess rightfully considered his efforts a success in that respect. Burgess failed, however, in his second goal: to transform legal education in order to better prepare law students for public service. While many law students initially pursued studies in the School of Political Science, that school never attracted an independent body of students preparing for public service. As the law school curriculum expanded after Dwight's departure, public law studies were kept at the margins, while the increasingly heavy required courseload made it more difficult for law students to enroll in courses at the political science school. The law school never excluded public law entirely; not even Dwight favored such a division. Public law remained, however, the subject of elective courses and graduate study until the reforms of 1935. Burgess had a remarkably prophetic vision of legal education as early as 1893: a curriculum including required courses in both private and public law, supplemented by courses in political science, history and economics; and the use of economic analysis in the study of private law. Such a curriculum would prepare students equally well for careers in public service or private practice. In many aspects, his vision predicted the transformation underway by 1935. However, despite the vehemence with which Burgess insisted that the School of Political Science remain open to law students, Burgess was unable to implement his grand vision. The founding of the School of Political Science marked Burgess' admission that he could not establish his proposed curriculum in the law school, and in that way it also marked Burgess' ultimate defeat.

¹⁴⁷*See Id.* at 326-27.

¹⁴⁸*See Id.* at 327.